IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1206 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRANKUMAR KANCHANLAL SHAH

Versus

NATIONAL BOARD OF EXAMINATIONS

Appearance:

1. Special Civil Application No. 1206 of 1994

MR KM PARIKH for Petitioner

MR BB NAIK for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/03/2003

ORAL JUDGEMENT

Neither of the learned advocates is present on call.

The petitioner before this Court challenges the decision of the National Board of Examinations dated 27th November, 1992.

It appears that the petitioner is a Doctor by profession, specialized in Pharmacology. At the relevant time, the petitioner was serving as an Associate Professor in the B.J Medical College, Ahmedabad. The petitioner claims that he had a bright academic career. The petitioner took the course in Super Speciality in the subject of Clinical Pharmacology & Therapeutics. The petitioner passed the theory examination conducted by the National Board of Examinations in August, 1992. The petitioner was informed that the practical/clinical and viva voce would be held on 2nd & 3rd November, 1992. The petitioner appeared for the practical/clinical examination as well as for the viva voce. However, under the impugned communication dated 27th November, 1992, he was informed that he had failed at the said examination. The petitioner was further informed that he was eligible to repeat the whole examination i.e. the theory and the practical to be held in February, 1993. Feeling aggrieved, the petitioner has preferred the present petition.

The contentions are two fold. First, it is the case of the petitioner that neither of the Examiners at practical/clinical examination and viva voce was qualified for being Examiner. According to the petitioner, such Examiner has to have the qualification of Super Speciality in Clinical Pharmacology & Therapeutics. However, none of the said Examiner had the requisite qualification. Further, since the petitioner had passed the theory examination, he cannot be called upon to appear at whole of the examination again. Since the petitioner had failed at the practical/clinical examination, he should be called upon to repeat the said practical/clinical and viva voce examination alone.

As recorded hereinabove, the impugned communication was sent to the petitioner on 27th November, 1992. The present petition has been preferred in the month of January, 1994 i.e. more than one year after the petitioner was declared fail. In the meantime, the petitioner appears to have made several representations to the concerned authority, however, neither of them appears to have been responded to. Even in the present petition, though the respondent-Board has entered appearance, neither of the Board has filed counter affidavit nor any one has represented the Board before the Court.

Nevertheless, no relief as prayed for by the petitioner can be granted. Even if the Examiners were not qualified to conduct the examinations as alleged by the petitioner, the petitioner cannot automatically be declared as having passed the examination. In that case, the petitioner would be required to be re-examined by the duly qualified Examiners. Further, the petitioner was permitted to repeat the examination in the month of February, 1993. It is not known whether the petitioner took the examination in the month of February, 1993 or any time thereafter or not.

In above view of the matter and in view of passage of time, no relief can be granted in favour of the petitioner. Hence, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

[Miss R.M Doshit, J.]

Prakash*